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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,294	01/20/2004	Christine Lang	2921-110	7179

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EXAMINER	
KRISHNAN, GANAPATHY	

ART UNIT	PAPER NUMBER
1623	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/759,294	LANG ET AL.	
	Examiner	Art Unit	
	Ganapathy Krishnan	1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *8-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *8-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *1/23/2006* .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The amendment filed 9/30/2005 has been received, entered and carefully considered. The following information provided in the amendment affects the instant application:

1. Claims 1-7 have been canceled.

2. New Claims 13-15 have been added.

3. Claims 8-12 have been amended.

4. Remarks drawn to rejections under 35 USC 102

Claims 8-15 are pending in the case.

The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 8-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogentoft (US 4191744) is being maintained for reasons of record.

Applicants argue that Bogentoft does not teach a method of producing the polygalacturonic acid of his invention and that the product used in the instant invention is obtained from pectin by cleavage with endopolygalacturonase without cleaving the ester groups. Bogentoft does not indicate any treatment of polygalacturonic acid is performed at all. This is not found to be persuasive.

Instant claim 8 is a product by process claim, which is examined as a product claim. Instant claim 8 is drawn to a food composition derived from pectin that contains ester groups. It doesn't matter from where (the source) the said polygalacturonide is derived.

The following rejection is made of record.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

New Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Buckley et al (US 3,973,051).

Buckley et al teach a food composition which comprises pectin having ester groups (col. 16, lines 60-64). This teaching is deemed to meet the limitations of instant claim 15.

Claim 15 is a product by process claims. It doesn't matter how the said polygalacturonides or the pectin used in the composition are obtained.

"Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 10-11 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogentoft (US 4,191,744) in combination with Buckley et al (US 3,973,051).

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10 and 11, which depend from claim 8, is drawn to a polygacturonide food composition, which further comprises baby food and canned food respectively. Claims 13 and 14 are drawn to the food composition, which has improved taste.

Bogentoft teaches a composition comprising polygalacturonic acid in water (col. 4, examples 3 and 4). This constitutes a composition comprising polygalacturonide as recited in instant claim 8. Since water is a drinkable liquid, it is a beverage. Bogentoft also teaches the use

of the polygalacturonides for improving palatability (in other words improving taste, col. 3, lines 42-50). However, Bogentoft does not specifically teach a food composition like baby food and canned food comprising pectins that have ester groups, which have improved taste.

Buckley teaches the use of pectins that contain ester groups in canned food (col. 7, lines 47-55; col. 10, lines 40-68).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use polygalacturonides in a food composition further comprising baby food, or canned food and to improve the taste of food as instantly claimed, since the taste improving polygalacturonic acid and an effective percentage range is disclosed in the prior art.

One of ordinary skill in the art would be motivated to do so since such compositions according to Bogentoft do not give pharmacological systemic effects, is well tolerated, and has good taste and consistency (col. 1, lines 10-16 and col. 2, lines 24-40).

Conclusion

Claims 8-15 are rejected

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ganapathy Krishnan whose telephone number is 571-272-0654. The examiner can normally be reached on 8.30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GK

2/20/06

Shaojia A. Jiang
Supervisory Patent Examiner
Art Unit 1623